

U.S. Application No. 10/774,028, filed February 6, 2004
Attorney Docket No. 14329US02
Response dated January 28, 2008
In Reply to Office Action mailed September 27, 2007

REMARKS

Claims 1-32 are pending. Claims 1-32 were rejected.

The Examiner has objected to the specification because the title is allegedly not descriptive. However, Applicants believe that a “System and Method for Teaming” is descriptive. Is it the position of the Examiner that the present application does not support a system and method for teaming? If the Examiner believes that a system and method for teaming is not described, then the Examiner is requested to further clarify.

In addition, the Examiner states that the new title should be “indicative of the invention to which the claims are directed”. Office Action at page 2. However, if the title should be related to the claimed inventions, then it would be premature, before claims are in condition for allowance, to provide a title “indicative of the invention to which the claims are directed”. Accordingly, if the objection is maintained, then the Examiner is requested to place the objection in abeyance until such time as the claims are in condition for allowance.

The Examiner has objected to the drawings because the Examiner has a preference for using word labels instead of reference numerals. It is noted that the Examiner did not provide a citation to the M.P.E.P. for such a requirement. Applicants respectfully request that the Examiner provide the section of the M.P.E.P. which supports the Examiner’s contention that the Examiner may require Applicants to provide “word labels” instead of reference numerals. Without citing any support in the M.P.E.P. or C.F.R., it is respectfully requested that the objection be withdrawn with respect to the drawings.

Claims 1-6, 12-15 and 17-19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,687,758 B2 (“Craft”) in view of U.S. Patent Publication No. 2004/0008705 A1 (“Lindsay”). Applicants traverse the rejection as set forth below.

35 U.S.C. § 103(c)(1) states that “[s]ubject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed

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invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.”

Lindsay is not available in support of a rejection under 35 U.S.C. § 103(a) because of the applicability of 35 U.S.C. § 103(c)(1). The present application is assigned to Broadcom Corporation as evidenced by Reel/Frame No. 014647/0192. Lindsay is also assigned to Broadcom Corporation as evidenced in the attached Assignment document. Furthermore, since Lindsay is available “as prior art only under one or more of subsections (e), (f), and (g) of section 102”, Lindsay cannot be used in an obviousness rejection under 35 U.S.C. § 103(a).

Accordingly, the obviousness rejection based on Craft in view of Lindsay cannot be maintained.

It is therefore respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to claims 1-6, 12-15 and 17-19.

Claims 7-10, 16, 20, 23 and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Craft in view of Lindsay, and in further view of U.S. Patent No. 6,941,377 B1 (“Diamant”). Applicants traverse the rejection as set forth below.

The obviousness rejection based on Craft in view of Lindsay and in further view of Diamant cannot be maintained since, according to 35 U.S.C. § 103(c), Lindsay is not available to support of an obviousness rejection under 35 U.S.C. § 103(a).

It is therefore respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to claims 7-10, 16, 20, 23 and 25.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Craft in view of Lindsay, and in further view of a document entitled “Winsock Direct and Protocol Offload on SANs” (“Microsoft”). Applicants traverse the rejection as set forth below.

The obviousness rejection based on Craft in view of Lindsay and in further view of Microsoft cannot be maintained since, according to 35 U.S.C. § 103(c), Lindsay is not available to support of an obviousness rejection under 35 U.S.C. § 103(a).

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It is therefore respectfully requested that the rejection under 35 U.S.C. § 103(a) be withdrawn with respect to claim 11.

Claims 21, 22, 24 and 26-32 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Craft. Applicants traverse the rejection as set forth below.

With respect to claim 28, the attention of the Examiner is respectfully drawn to the recited elements “teaming ...; adding an additional network interface card ...; and teaming”. The Examiner cites Craft at col. 1, line 66 to col. 2, line 2; however, the citation does not mention teaming, adding and teaming. Where does Craft describe teaming, adding and teaming?

Applicants would like a clarification from the Examiner concerning “the intermediate driver supporting teaming over the second set and the third set” as set forth in claim 21 and “teaming a plurality of network interface cards” as set forth in claims 26 and 28.

Is the Examiner alleging that, for example, the intermediate drive is supporting teaming over the second set and the third set because it is coupled to it?

Applicants do not necessarily agree or disagree with the Examiner’s characterization of the documents made of record, either alone or in combination, or the Examiner’s characterization of recited claim elements. Furthermore, Applicants respectfully reserve the right to argue the characterization of the documents of record, either alone or in combination, to argue what is allegedly well known, allegedly obvious or allegedly disclosed, or the characterization of the recited claim elements should that need arise in the future.

With respect to the present application, Applicants hereby rescind any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer of claim scope, if any, and the alleged prior art that it was made to allegedly avoid, may need to be revisited. Nor should a disclaimer of claim scope, if any, in the present application be read back into any predecessor or related application.

In view of at least the foregoing, it is respectfully submitted that the present application is in condition for allowance. Should anything remain in order to place the present application in

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condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge any additional fees, to charge any fee deficiencies or to credit any overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Date: January 28, 2008

Respectfully submitted,

/Michael T. Cruz/
Michael T. Cruz
Reg. No. 44,636

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Attachment: Assignment Document for Lindsay (2 Pages)

ASSIGNMENT

Case No. 13769US02

Serial No. 10/439,494

Inventor(s): Steven B. Lindsay

Filing Date: May 16, 2003

In consideration of One Dollar (\$1.00) and other good and valuable considerations in hand paid, the receipt and sufficiency whereof are hereby acknowledged, the undersigned hereby assigns to Broadcom Corporation, (the Assignee) his/her entire right, title and interest in the invention or improvements of the undersigned disclosed in an application for Letters Patent of the United States, entitled: **SYSTEM, METHOD, AND APPARATUS FOR LOAD-BALANCING TO A PLURALITY OF PORTS**; and identified as Case No. 13769US02 in the offices of McANDREWS, HELD & MALLOY, LTD., and in said application and any and all other applications, both United States and foreign, which the undersigned may file, either solely or jointly with others, on said invention or improvements, and in any and all Letters Patent of the United States and foreign countries, which may be obtained on any of said applications, and in any continuation, continuation-in-part, divisional, reexamination, reissue or extension of such applications or patents, and further assign to said assignee the priority right provided by the International Convention.

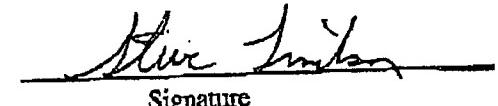
The undersigned hereby authorizes and requests the Commissioner of Patents and Trademarks to issue said Letters Patent to said assignee.

The undersigned hereby authorizes and requests the attorneys of record in said application to insert in this assignment the filing date and serial number of said application when officially known.

The undersigned warrants himself to be (or to have been), along with any listed co-inventors, the owner(s) of the entire right, title and interest in said invention or improvements and to have the right to make this assignment, and further warrants that there are no outstanding prior assignments, licenses, or other encumbrances on the interest herein assigned.

For said considerations the undersigned hereby agrees, upon the request and at the expense of said assignee, its successors and assigns, to execute any and all continuation, continuation-in-part, divisional, extension, and substitute applications for said invention or improvements, and any necessary oath, affidavit or declaration relating thereto, and any application for the reissue, re-examination or extension of any Letters Patent that may be granted upon said application, and any and all applications and other document for Letters Patent in foreign countries on said invention or improvements, that said assignee, its successors or assigns may deem necessary or expedient, and for the said considerations the undersigned authorizes said assignee to apply for patents for said invention or improvements in its own name in such countries

where such procedure is proper and further agrees, upon the request of said assignee, its successors and assigns, to cooperate to the best of the ability of the undersigned with said assignee, its successors and assigns, in any proceedings or transactions involving such applications or patents, including the preparation and execution of preliminary statements, giving and producing evidence, and performing any and all other acts necessary to obtain said Letters Patent, both United States and foreign, and vest all rights therein hereby conveyed in the assignee, its successors and assigns, whereby said Letters Patent will be held and enjoyed by the said assignee, its successors and assigns, to the full end of the term for which said Letters Patent will be granted, as fully and entirely as the same would have been held and enjoyed by the undersigned if this assignment has not been made.



Signature

Inventor: Steven B. LindsayAddress 22111 Stillwater
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